UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/109
13 January 2000

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 19 of the provisional agenda

ADVISORY SERVICES AND TECHNICAL COOPERATION IN THE FIELD OF HUMAN RIGHTS

Situation of human rights in Cambodia

Report of the Special Representative of the Secretary-General for human rights in Cambodia, Mr. Thomas Hammarberg, submitted in accordance with resolution 1999/76

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Executive summary

The mandate of the Special Representative of the Secretary-General for human rights in Cambodia, was set out in Commission on Human Rights resolution 1993/6 of February 1993:

(a) To maintain contact with the Government and people of Cambodia;

(b) To guide and coordinate the United Nations human rights presence in Cambodia;

(c) To assist the Government in the promotion and protection of human rights.

Since his appointment in May 1996, the Special Representative has conducted 16 official missions to Cambodia and reported to the Commission on Human Rights and the General Assembly. He submitted his most recent report (A/54/353) to the General Assembly at its fifty-fourth session in 1999.

The present report describes two missions to Cambodia undertaken by the Special Representative, in August and October 1999, analyses the major human rights issues he encountered during these missions and comments on the implementation of previous recommendations.

During the missions described in this report, the Special Representative met the Presidents of the Senate and the National Assembly, a wide range of senior government officials, representatives of non-governmental organizations and members of the diplomatic corps. During the mission in August 1999, which he undertook together with the Deputy High Commissioner for Human Rights, he discussed with the Government the renewal of the Memorandum of Understanding covering the activities of the Cambodia Office of the High Commissioner for Human Rights, which will expire in March 2000. Agreement was reached on the renewal of the Memorandum for a further two years, and discussions are proceeding on the details of its content.

The mission in October 1999 focused on the functioning of the judicial system and on prison conditions in Cambodia. At an audience during the mission, His Majesty King Sihanouk expressed his continuing support for the work of the Special Representative and of the Cambodia Office of the High Commissioner for Human Rights. The Special Representative addressed the National Assembly on human rights issues. He also met the Prime Minister and discussed with him issues relating to the establishment of a tribunal to bring to justice those most responsible for the most serious crimes during the Khmer Rouge period. The Prime Minister reiterated his concern that arrangements for the tribunal should respect Cambodian sovereignty.

The Special Representative emphasized that there would be no United Nations involvement in any process unless the Secretary-General was convinced that international standards for justice, fairness and due process would be met. The Prime Minister said that a

revised draft of the law on the establishment of a tribunal being prepared by Cambodian experts would be forwarded to the United Nations and other international partners for comment before the end of November. The Special Representative also discussed with the Prime Minister his concerns about prison conditions and the functioning of the justice system.

The Special Representative continues to be preoccupied by the issue of impunity. While some cases of politically-motivated violence previously reported on by him have been investigated during 1999, he urges that further investigations be undertaken and welcomes commitments from the Government to that effect. He has noted several incidents of intimidation against members of the main political opposition party in recent months. He is aware that thorough investigations have not taken place in several cases where the perpetrators of violent acts are known to be members of the police or the armed forces.

With regard to the rule of law, the Special Representative has drawn the attention of the Government to the recent spate of mob killings of persons suspected of committing a murder. He also noted two recent "reintegration" ceremonies which gave a number of people de facto exemption from prosecution for serious crimes. He continues to receive reports of the confiscation of land from civilians by members of the armed forces, and welcomes the progress made recently on the drafting of the new Land Law. Regarding the administration of justice, the work being done to prepare the laws and codes which are essential components of the basic legal framework, and recent meetings of the Supreme Council of Magistracy are positive developments. The decision to set up a Council on Judicial Reform is also welcome, although it has not yet been implemented.

The Special Representative notes that excessive pre-trial detention continues to occur, while the provisions for conditional release from prison are rarely implemented. Confusion between the jurisdictions of the civil and military courts seems to be arising, despite the existence of explicit distinctions in the law. He notes with particular regret recent reports which indicate increasing interference by the executive with the independence of the judiciary. While action must be taken to stem corruption and other abuses in the court system, such action must be in accordance with the law and the Constitution.

Torture of persons in police custody continues to occur, and the Special Representative has reviewed a recent National Police report on cases of torture in Battambang province reported on by him in 1997. While the conclusions of the National Police report are different from his own, he notes the commitment made to undertake further investigations and the useful technical recommendations in the report. Prison conditions continue to be an area of special concern. Although some improvements have been made, overcrowding is increasing, jeopardizing the health and safety of prisoners. The special needs of women and juveniles require greater attention.

In the area of labour rights, some measures are being taken towards full implementation of the Labour Code which should help address continuing violations, such as arbitrary dismissal, unsafe working conditions and compulsory overtime. The Special Representative hopes that Cambodia will ratify ILO Convention No. 182 on the elimination of the most harmful forms of child labour. In recent months, the rights of members of the ethnic Vietnamese minority have

been compromised by their forcible removal from the river-banks in Phnom Penh. Other urban poor communities may also be forced to relocate and the Special Representative underlines the need to respect both the human rights and the humanitarian needs of these people.

In conclusion, while grave problems remain within the justice system, and public confidence in it is weak, the Special Representative welcomes recent government statements committing itself to judicial reform. He stresses, however, that further measures are needed to safeguard the independence of the judiciary, which appears to be increasingly under threat, and to tackle the problem of impunity, which is manifest in the serious inequities in the treatment of offenders. Efforts to investigate acts of politically-related violence must be reinvigorated and brought to a conclusion. He notes the desire of many Cambodians to see the leaders of the Khmer Rouge brought to a fair trial, in the interests of peace, justice and national reconciliation.

The Special Representative is concerned that the rights of many Cambodians, especially children, to health and education may be compromised by a lack of resources, despite the plans of the relevant Ministries for reform and revitalization. The situation of ethnic minorities requires active monitoring if their way of life is to be protected and their basic rights upheld.

The Special Representative has now completed his last mission to Cambodia. Both political will and resources are needed to address the grave problems he has identified. He calls on the international community to continue its support to the Government and people of Cambodia, in a spirit of solidarity, working with them to create a peaceful society where the rights of all are respected and the rule of law and justice prevail.

Introduction

1. In its resolution 1999/76, the Commission on Human Rights requested the Secretary-General to report to it at its fifty-sixth session on the recommendations made by the Special Representative. The present report is submitted in response to that request and is based on the fifteenth and sixteenth missions of the Special Representative, undertaken in August 1999 and October 1999. Like previous reports, it considers civil, cultural, economic, political and social rights. The present report, finalized in mid-December 1999, is the last report to be submitted by the Special Representative, who had requested that his mandate end on 31 December 1999.

2. The tasks of the Special Representative

(a) To maintain contact with the Government and people of Cambodia;

(b) To guide and coordinate the United Nations human rights presence in Cambodia;

(c) To assist the Government in the promotion and protection of human rights;

were spelled out in the Commission on Human Rights resolution 1993/6 of February 1993.

3. The Special Representative has undertaken 16 official missions to Cambodia since he assumed his functions in May 1996 and has reported to the Commission on Human Rights (E/CN.4/1997/85, E/CN.4/1998/95, E/CN.4/1999/101) and to the General Assembly (A/51/453, annex; A/52/489, annex; A/53/400, annex; A/54/353, annex).

4. In its resolution 54/171, the General Assembly requested the Secretary-General, through his Special Representative, to assist the Government in ensuring the protection of the human rights of all people in Cambodia. The General Assembly took note with appreciation of the report of the Special Representative and noted in particular his concerns about the problem of impunity, the need to promote and protect the independence of the judiciary and to establish the rule of law, and the need for the reform of the police and the military.

5. The General Assembly endorsed the comments of the Special Representative that the most serious human rights violations in Cambodia in recent history had been committed by the Khmer Rouge. It appealed strongly to the Government to ensure that those most responsible for the most serious violations of human rights were brought to account in accordance with international standards of justice, fairness and due process of law, welcomed the efforts of the United Nations Secretariat and actors of the international community in assisting the Government to that end, and encouraged the Government to continue to cooperate with the United Nations with a view to reaching an agreement.

6. Further, the Assembly commended the vital and valuable role played by non-governmental organizations in Cambodia, inter alia in the development of civil society and encouraged the Government to continue to work with them in efforts to strengthen and uphold human rights in Cambodia.

I. THE SPECIAL REPRESENTATIVE'S ACTIVITIES AND SOURCES

A. Fifteenth mission to Cambodia, 21-26 August 1999

7. This brief mission was undertaken in order to discuss with the Government the continued cooperation between it and the Cambodia Office of the High Commissioner for Human Rights. The current Memorandum of Understanding covering the Office's activities expires in March 2000. This mission was undertaken jointly with the Deputy High Commissioner for Human Rights. The Chief of the Programmes and Activities Branch of the Office of the High Commissioner for Human Rights (OHCHR) also took part in the mission.

8. An aide-mémoire had been given to the Government ahead of the mission with proposals for future priorities. A draft of a new memorandum of understanding including these suggested priorities was submitted subsequently. The United Nations delegation met with the Minister for Foreign Affairs, H.E. Hor Namhong, who stated that the Government wanted the Cambodia Office to continue its work, that it was proposing a concrete agreement for one year from March 2000 and that that agreement would be renewable. The Special Representative and the Deputy High Commissioner explained that, for planning and budgetary reasons, one-year programmes were not desirable, even if it was understood that they were renewable. It was agreed that that particular issue would be discussed further. The Special Representative and the Deputy High Commissioner discussed the suggested priorities with the governmental Human Rights Committee, chaired by H.E. Om Yen Tieng. The Prime Minister later informed the United Nations Secretary-General, at their meeting in September 1999, that the Government agreed to a planning period of two years.

9. With H.R.H. Prince Norodom Ranariddh, President of the National Assembly, the Special Representative discussed cooperation with regional and international organizations of parliamentarians and welcomed progress in this regard. During a meeting with H.E. Sar Kheng, Deputy Prime Minister and Co-Minister of the Interior, the Special Representative raised a specific case relating to the killing of two prisoners who had been recaptured after their escape from Sihanoukville prison in June 1999.

10. This visit of the Special Representative partly coincided with the mission of a United Nations legal delegation led by the Assistant Secretary-General for Legal Affairs. This mission came to Phnom Penh to discuss how legal proceedings against Khmer Rouge leaders could be organized. Though the Special Representative met the legal delegation, the two missions were clearly separate.

B. Sixteenth mission to Cambodia, 18-27 October 1999

11. The focus of this mission was the functioning of the judicial system. The Special Representative also looked into the question of prison conditions and had discussions on issues relating to economic and social rights. The Government and other partners were informed that this was the last official mission of the Special Representative to Cambodia.

12. During his visit, the Special Representative had an audience with the King of Cambodia, His Majesty King Sihanouk. He held meetings with senior government representatives,

including the Prime Minister, Hun Sen, the Deputy Prime Minister and Co-Minister of the Interior, Sar Kheng, the Minister of Justice, Uk Vithun, and the Minister of Information, Lu Lay Sreng. He addressed the National Assembly and met the President of the National Assembly, His Royal Highness Prince Ranariddh. He met the President of the Senate, Chea Sim, in his capacity as acting President of the Supreme Council of Magistracy.

13. The Special Representative also had discussions with the human rights non-governmental organizations, including those which constitute the Action Committee, and with representatives of NGOs involved in socio-economic development. He chaired a meeting on prison reform attended by representatives of ministries, NGOs and United Nations agencies and gave the opening address at a seminar for judges and prosecutors organized by the Ministry of Justice with support from the Cambodia Office. He had individual meetings with several members of the diplomatic community, participated in a meeting of the informal donor Contact Group on the reform of the administration of justice and held a briefing for diplomats and a press conference at the end of his mission.

14. During his audience with the King, the Special Representative thanked His Majesty for his continuing support for and defence of the human rights of all people in Cambodia. His Majesty reiterated his position that United Nations involvement in any trial of Khmer Rouge leaders would not constitute an abuse of Cambodia's sovereignty. His Majesty expressed his satisfaction at the two-year extension of the Cambodia Office's Memorandum of Understanding with the Government, and his continuing support for the work of the Special Representative and of the Office.

15. The Special Representative made a visit to the province of Kompong Thom, where he met representatives of human rights NGOs, visited the prison and the court, and met senior police and the military officials. He also met the Second Deputy Governor of the province and representatives of the provincial Departments of Agriculture and Rural Development. The Special Representative was particularly concerned about gross overcrowding in the prison. He discussed at length with the provincial court the difficulties it was experiencing in trying to collect evidence about the murder in 1998 of nine fishermen in which members of the military were involved. With the police, he discussed the closure of illegal checkpoints, training for police personnel and problems arising from an apparent lack of trust between the police and the court. With the military, he raised the current status of the militia, the weapons collection programme and human rights training for the military.

16. In Phnom Penh, the Special Representative raised with the Minister of Information the need for clarification of the press law and for a clear distinction to be made between the role of the Ministry and that of the judiciary in implementing that law. With the Minister of Justice, he emphasized the need for judicial reform and for the Supreme Council of Magistracy to assume its full functions, a point he also raised with His Majesty the King, the President of the Senate and his other senior government interlocutors.

17. At his meeting with the Prime Minister, the Special Representative raised the issue of prison conditions, the administration of justice and justice for the Khmer Rouge. On prison conditions, he drew the Prime Minister's attention to the continuing problem of the diversion of the daily allocations made for prisoners' subsistence to other purposes. He also mentioned the

severe problems caused by overcrowding and the special needs of women prisoners. He suggested that, in order to attract the attention of donors to the needs of prisons, a signal of the Government's commitment to prison reform was required. He also raised a number of issues related to the administration of justice, citing in particular the difficulties experienced by the court system in investigating and bringing to trial cases involving the military, and the apparent lack of trust between the police and the courts. He also referred to recent instances of mob killings and the granting of "amnesties" in Prey Veng province.

18. On the Khmer Rouge issue, the Special Representative reiterated to the Prime Minister his conviction that the international community would support a trial in Cambodia provided that it met the standards of justice, fairness and due process of law, and provided that it was fully independent. In his discussion, he ascertained from the Prime Minister that a new draft of the law to establish proceedings against the Khmer Rouge was in preparation with assistance from several foreign experts, and that this draft would be circulated for comment to the United Nations and others in November 1999 before its submission to the Council of Ministers in December 1999. The Prime Minister informed the Special Representative that he expected that the law would be adopted by the National Assembly and the Senate in early 2000 and that the process would be under way in the first quarter of the year 2000.

19. With the Director of the National Police, the Special Representative discussed the outcome of recent police investigations into cases of torture of suspects in police custody reported on by the Special Representative in 1997. He commended the efforts of the investigators and stated that, although the conclusions of the investigations differed substantially from those contained in his own report, he supported most of the recommendations contained in the investigators' report. He drew the attention of the Director to the report prepared by the two experts in police reform who had visited Cambodia in May 1999, and offered support in analysing their recommendations.

20. During his meeting with the Co-Minister of the Interior, the Special Representative expressed his concern about prison conditions and also discussed with him the difficulties in the relationship between the police and the courts. He also raised the issue of the recently-formed People's Protection Units and asked about their functions. He mentioned the report prepared by the Ministry of the Interior and presented to the Prime Minister in May 1999 concerning some of the killings described in the Memorandum which he had presented to the Government in May 1998, and asked whether any further investigations were planned.

II. MAJOR HUMAN RIGHTS ISSUES AND RECOMMENDATIONS

A. Protection against political violence and the problem of impunity

21. The Special Representative welcomes the undertaking by the Deputy Prime Minister and Co-Minister of the Interior to initiate further investigations into cases of killings and disappearances reported by the Special Representative to the Government in his Memoranda of 1997 and 1998. A number of these cases were analysed in the report presented by the Ministry of the Interior to the Prime Minister in May 1999. The Special Representative regards the preparation of that report as a first step in fulfilling the commitment made by the Prime Minister

at the Consultative Group Meeting for Cambodia in Tokyo in February 1999 to investigate the more than 130 instances of killings and disappearance which have taken place since 30 March 1997.

22. The Special Representative hopes that the Government will make serious efforts to investigate and bring to justice those responsible for the serious acts of apparently politically related violence committed during the term of the previous Government. These included the assassination of four journalists; the grenade attack against the Buddhist Liberal Democratic Party congress in September 1995; the assassination of Keo Samouth in late 1996; the 30 March 1997 grenade attack against a peaceful and legal demonstration; the rocket attack against the television station in Sihanoukville on 4 May 1997; the grenade attack on the office of the daily newspaper Koh Santhepheap on 15 October 1997 and the subsequent attempt against the life of its editor; the killings and disappearances of military and civilian members of opposition political parties in July 1997 and in the subsequent months; the killings reported prior to the 1998 elections; and the deaths related to the post-election demonstrations. The killings of Vietnamese and Cambodian fishermen or workers, in the context of racist attacks by members of the Khmer Rouge guerrillas, ought also to be seriously investigated.

23. In the last quarter of 1999 there were several reports of political intimidation and acts of violence against members of the political opposition. The incidents include the illegal arrest and detention of opposition political party members Kong Bunhieng and Mong Davuth, who have been accused of involvement in the September 1998 rocket attack against a government convoy in Siem Reap. The two were apprehended by members of the Military Intelligence Department who had no authority to make arrests. Since being arrested, Kong Bunhieng and Mong Davuth have been detained in the Military Prison and will reportedly be tried by the military court. The jurisdiction of the military court, however, is limited by law to breaches of military discipline committed by military personnel.

24. In response to a letter sent by the Cambodia Office to the Military Prosecutor on 14 September 1999 raising these issues, the Co-Ministers of National Defence stated their view that the arrest and detention of Kong Bunhieng and Mong Davuth were legally and procedurally correct. Attempts by the Cambodia Office to gain access to the detainees through the Ministry of National Defence and the Military Court have been denied.

25. A group of armed men dressed in military uniform attacked the home and seriously assaulted the wife of the Second Vice-President of the Senate, FUNCINPEC Senator Nhek Bun Chay on 13 September 1999. On 6 October 1999, Lun Phun, a member of the National Assembly from the Sam Rainsy Party, abducted by a group of four armed men in military uniform and held until his family, with assistance from the Ministry of the Interior, paid a substantial ransom for his release.

26. The Special Representative takes note of the Prime Minister's commitment made during their meeting in October 1999 to instruct the Ministry of National Defence and the military General Staff to command those military personnel suspected of involvement in the 2 April 1998 massacre of nine fishermen in Kompong Thom province to cooperate fully with the provincial court's investigation of the case. The Special Representative welcomes the statement made by

the Prime Minister at the same meeting that the torture and killing of Tuy Teth in Kompong Cham in 1998 by forces belonging to the Artillery Support Battalion would be investigated.

27. The Special Representative expresses his concern that no action has yet been taken by the Cambodian authorities to investigate and bring to justice those responsible for the alleged extrajudicial killings on 17 June 1999 of Chen Vibol and Nguyen Yang Yong, two prisoners recaptured after their escape from Sihanoukville prison. This case was raised with the Government by the Special Representative during his visit to Cambodia in August 1999.

28. The Special Representative is also concerned for the safety of Free Vietnam activist Vu Duc Binh, who disappeared on 31 July 1999 while in the custody of a team of Ministry of Interior police, and whose whereabouts are still unknown.

29. Another concern relates to the safety of Chou Ouk, a suspect in a murder case, who disappeared while in the custody of Battallion 2 in Kamchay Mea district, Prey Veng province. A mixed unit of police and military executed an army-issued order for the arrest of Chou Ouk on 18 July 1999. According to reports received from witnesses of the arrest and subsequent detention, Chou Ouk was beaten severely at the time of arrest and then detained at T Compound, Battalion 2, Kamchay Mea district. On 20 July, Chou Ouk disappeared and reports indicate that he was killed and his body disposed of inside the military compound. Attempts by staff of the Cambodia Office to have access to the compound, through letters to and meetings with the Deputy Commander of the 2nd Military Region, and through written requests sent directly to the Co-Ministers of National Defence, have met with no response.

B. Legal proceedings relating to crimes committed by the Khmer Rouge

30. The issue of a trial relating to Khmer Rouge crimes committed in the period 1975-1979 came up during the fifty-fifth session of the Commission on Human Rights in Geneva. In its resolution 1999/76 on human rights in Cambodia, the Commission took note with appreciation of the report of the Group of Experts appointed by the Secretary-General in response to the request by the Cambodian authorities for assistance in responding to past serious violations of Cambodian and international law by the Khmer Rouge, and strongly appealed to the Government of Cambodia to take all necessary measures to ensure that those who were most responsible for the most serious violations of human rights were brought to account in accordance with the international standards of justice, fairness and due process of law. The Commission encouraged the Government of Cambodia and the international community to continue to cooperate for that purpose.

31. Prime Minister Hun Sen wrote to the Secretary-General on 28 April 1999 explaining that, though the trial of Ta Mok and possibly others would take place in an existing national court, foreign judges and prosecutors would be invited to take part fully in the trial in order to ensure that it would meet international standards of due process. A draft law would be submitted for approval to the Cambodian National Assembly allowing for foreign judges and prosecutors to take part in the proceedings.

32. The Prime Minister discussed the possibility of a "mixed" tribunal in a meeting with the Special Representative on 18 May 1999 during which he raised the issue of the mechanism for appointing foreign judges and prosecutors. He asked, tentatively, whether it would be possible for the Secretary-General to make such appointments. The Special Representative, in his response, emphasized that any United Nations involvement in this connection would depend on whether there were full guarantees that the international standards of justice, fairness and due process would be respected. The enabling legislation to be drafted and adopted for this purpose would have to address the concerns the Secretary-General had expressed in his letter of 15 March 1999 to the General Assembly and the Security Council.

33. The Special Representative mentioned at that meeting that the report of the Group of Experts gave important guidance as to the characteristics of the required legislation both in relation to the substantive law and to procedural aspects. Relevant international standards have to be incorporated and the applicability of the domestic legislation relevant at the time should be clarified. With regard to the procedural aspects there would be a need to clarify, for instance, steps to ensure that the tribunal would be protected against undue pressure; satisfactory arrangements for the arrest of persons indicted; requirements for the assessment of evidence; the procedures for appeal; a satisfactory mechanism for the appointment of the judges, prosecutors and other professional staff; as well as issues relating to the organization and funding of the tribunal.

34. The Prime Minister stated that it would be very appropriate that experts should assist Cambodia in the drafting of the legislation, to ensure that it would meet the necessary requirements in accordance with international standards. The Special Representative undertook to convey that message to the United Nations Secretariat and to propose that such expertise be provided. He also stated that any further United Nations involvement after the drafting stage would depend on whether there was an agreement on the inclusion in the legislation of guarantees that appropriate international standards would be respected.

35. The Special Representative reported on these developments at meetings in the United Nations Secretariat on 24 May and 10 June 1999. The Office of Legal Affairs of the United Nations undertook to analyse the legal requirements in relation to a "mixed" tribunal. Members of the Security Council were informed in late July about the discussions with the Government of Cambodia on the issue of a tribunal. A mission led by the Assistant Secretary-General for Legal Affairs arrived in Phnom Penh on 25 August 1999.

36. The Government had appointed a working group chaired by Senior Minister Sok An to meet with the United Nations legal delegation. Modalities for a trial in Cambodia with international participation were discussed. Before leaving Cambodia, the United Nations delegation handed over for further consideration a draft law for the establishment of a tribunal. There were further discussions in New York in September 1999 between the Secretary-General and the Prime Minister, as well as between the Assistant Secretary-General for Legal Affairs and the Senior Minister.

37. This issue was also raised during the meeting between the Prime Minister and the Special Representative on 25 October 1999. The Prime Minister explained that the Government

intended to consult with legal experts from other countries, including France, Russia and India, and thereafter submit its revised draft of the law, which would take account of the proposal by the United Nations legal delegation, before the end of November. The Prime Minister suggested a quick response from the United Nations Secretariat in order that a draft law could be put to the National Assembly before the end of 1999.

38. The Prime Minister expressed concern about the aspect of national sovereignty and saw the proposal that the international community appoint the majority of the judges as an infringement. However, he stated that he agreed with the suggestion for a "super-majority" arrangement, which would mean that, though the majority of the judges would be Cambodians, a broad majority would be needed for any decision so that the views of the minority would be respected.

39. As on earlier occasions, the Special Representative made clear that there would be no United Nations involvement in any process to bring the Khmer Rouge to justice unless the Secretary-General was convinced that the proposal ensured that recognized international standards of justice, fairness and due process would be met. There would have to be guarantees that there could be no political interference and that the whole process would be independent.

40. At the time of writing of the present report (mid-December 1999), the final proposal from the Government had not yet been submitted. The General Assembly, in its resolution 54/171, welcomed the efforts by the United Nations Secretariat and actors of the international community to assist the Government in the matter and encouraged the Government to continue to cooperate with the United Nations with a view to reaching an agreement.

C. The rule of law and the functioning of the judiciary

41. The Special Representative has reported in the past on the lack of effective functioning of the judicial system due to lack of cooperation from, or interference by, organs of State authority. One case raised by the Special Representative related to Meach Bunrith, a Poipet brothel owner accused of beating to death a sex worker, Nguyen Thi Phoeung, in June 1998 in front of 10 witnesses. The Ministry of Justice ordered the investigation reopened after the initial finding of the court that there was insufficient evidence against Meach Bunrith. According to Banteay Meanchey court officials, Meach Bunrith was rearrested by the police in Poipet on 2 December 1999 and detained in Banteay Meanchey prison. Meach Bunrith has been charged with manslaughter and pimping under the Law on the Suppression of Trafficking and Sales of Human Persons. While regretting the long delay in prosecuting Meach Bunrith, the Special Representative welcomes the rearrest and expresses the hope that a serious judicial process will now follow.

42. The Special Representative has also raised with the Prime Minister, Deputy Prime Minister and Co-Minister of the Interior and Director-General of the National Police his concerns over a recent wave of mob killings of suspected thieves. Between July and October 1999, there were 10 incidents in which suspected thieves were beaten by "angry mobs", causing the deaths of 11 people and serious injuries to several others. In six of these cases, the suspects were in police custody prior to being captured by the mob and beaten to death.

The Special Representative is also aware of eight further cases of the use of excessive and lethal force by the police against people whom they were in the process of arresting during the same period, involving the deaths of eight people and serious injuries to three others.

43. In one such case, which occurred in Phnom Penh on 13 October 1999, municipal police arrested and handcuffed a suspected thief named Bich Phoeun. After roughly two hours in police custody, Bich Phoeun's restraints were removed and police looked on while a group of men beat him with sticks. After sustaining several serious injuries, Bich Phoeun ran to escape the beating. While running, he was ambushed and shot dead by a group of "Flying Tiger" police.

44. The Special Representative notes the Ministry of the Interior circular of 21 May 1999 issuing a plan for "People's Protection Movement" (PPM) units in the municipalities and rural areas of Cambodia, and the subsequent implementation of that circular from August onwards. The Special Representative is informed that PPM units have already been created in all districts of Phnom Penh Municipality and in some provinces, with an official mandate to perform internal security and law and order functions. The Special Representative is informed that, under the plan, PPM units are permitted to carry clubs, sticks and knives in the performance of their duties.

45. The Special Representative is concerned that the joint mobilization of citizens, police, the armed forces and civil servants in order to perform internal security functions, as set out under the PPM plan, contradicts the letter and the spirit of the Cambodian Constitution and several Cambodian laws. While recognizing that tackling law and order issues is vital to the establishment of the rule of law in Cambodia, the Special Representative stresses that the maintenance of internal security is the domain of appropriately-constituted and regulated law enforcement bodies, complemented by a strong and independent judiciary. The creation of unconstitutional groups under the PPM plan undermines efforts to strengthen the institutions vital for the maintenance of the rule of law. The Special Representative is also concerned that this plan may create possibilities for abuse of power and that it sanctions the use of weapons against suspected criminals. The Special Representative is gravely concerned that this may further exacerbate the current trend in Cambodia of increasingly frequent acts of summary justice against suspected criminals.

46. The Special Representative notes again that an arrest warrant issued in July 1999 against a policeman who allegedly murdered a young woman in a karaoke bar in February 1999 has still not been acted upon. The Special Representative continues to receive reports of grave violations of the rights of women perpetrated by Cambodian law enforcement and armed forces personnel. The Special Representative calls on the Cambodian authorities to investigate the gang-rape by a government bodyguard unit of two women on 25 October 1999. The Special Representative is informed of allegations that the bodyguard unit captured the women and gang-raped them at knifepoint inside the Botum pagoda in Phnom Penh. Subsequent to the rape, members of the bodyguard unit responsible made threats against the victims if the latter dared to complain to the authorities. The Special Representative notes the special interest taken in this case by the Minister of Women's and Veterans' Affairs.

47. The Special Representative continues to receive frequent reports of the confiscation of land from civilians by members of the Cambodian authorities. The Special Representative

expresses his concern that, in the vast majority of these cases, ordinary Cambodians are forced off land to which they have a legitimate claim by members of the military, the police or the civilian authorities. These authorities are acting on their own behalf in some cases, while in others they are employed on behalf of other individuals. The Special Representative regrets the use of violence and the destruction of property in some of these actions. In Poipet commune, Banteay Meanchey province, in August 1999, a group of around 250 families were driven off their land by a mixed force of soldiers, police and gendarmes and, in the same month, 130 families were violently evicted from the site of a former Vietnamese military hospital in the town of Siem Reap.

48. The Special Representative recalls the statements made by senior government officials deploring such actions and calls on the Government to redouble its efforts to prevent land confiscation, which violates the fundamental rights of the people of Cambodia and is the source of violent disputes. He further requests that land cases should be investigated and resolved in accordance with the law and with balanced consideration of the interests of all parties concerned. The Special Representative welcomes recent progress made on the drafting of the new Land Law and the active participation of the non-governmental community in the drafting process.

49. The Special Representative notes that in September 1999, Prey Veng provincial authorities held two separate "reintegration" ceremonies for armed robbers and brothel owners, attended by senior government officials and a member of the National Assembly. The Special Representative is informed that these ceremonies were performed in order to grant waivers from prosecution for crimes previously committed to 15 armed robbers and a similar number of brothel owners. Seven of the 15 armed robbers "reintegrated" have court warrants outstanding against them, some for murder. The Special Representative is concerned that such actions directly undermine the functioning of the judicial system and he welcomes the efforts of the General Prosecutor to look further into the matter. The Special Representative raised this issue with the Prime Minister, the Deputy Prime Minister and Co-Minister of the Interior, and the Minister of Justice during his October visit.

50. The Special Representative welcomes the work currently being undertaken by the Government of Cambodia to finalize a number of draft laws, such as the draft code of criminal procedure, the draft statute on magistrates and the draft statute on court clerks, which are important for the proper functioning of the judiciary. He also welcomes the organization of an extended meeting of the Supreme Council of Magistracy in November 1999, in which the draft laws on the functioning of the courts were discussed. It is understood that during this meeting the Council considered the issue of a salary review for judges and prosecutors and also instructed the respective disciplinary committees of the Council to convene meetings as early as possible in order to examine the complaints filed by citizens against certain judges and prosecutors.

51. The Special Representative draws attention to the need to ensure the right of convicted persons to have their sentences reviewed by a higher court. The lack of transport for convicted persons from the prisons where they are held to the Court of Appeal constitutes a violation of this right. From the beginning of August until November 1999, the staff of the Cambodia Office attended, at the Court of Appeal, 30 scheduled appeals of persons convicted of criminal offences. In only six cases were the convicted persons present, as requested by the General Prosecutor of the Court of Appeal. In the remaining 24 cases, the responsible authorities failed to bring the

detainees to the Court of Appeal. In most of these cases the hearing was postponed. According to information gathered by the Cambodia Office, those prisoners who are present when their appeals are heard in the Court of Appeal generally have to pay for their own transportation and for the costs of the police accompanying them. The right to appeal is further hampered by undue delays between the filing of an appeal and the actual hearing by the higher court. On 18 February 1995, Sou Chamroeun was sentenced by the Battambang court to 15 years' imprisonment for murder. The judgement was appealed on 15 March 1995, but no hearing was held at the Court of Appeal until 28 July 1999, when Sou Chamroeun was acquitted. The judgement of the Court of Appeal has been appealed to the Supreme Court and Sou Chamroeun remains in prison.

52. The existing legal provision for conditional release is rarely used. The Special Representative raised this issue with the Minister of Justice during his October mission to Cambodia. Cambodian law stipulates that convicted persons who have served half of their prison term for a misdemeanour, or two thirds of their term for a crime, may be granted conditional release, if the court is so advised by prison officials and if it can be assumed that this release will assist the reinsertion of the individual into society. More frequent use of conditional release could, apart from serving reinsertion, slow down the rapid rate at which the prison population is growing. Overcrowding in prisons leads to multiple problems which pose immense challenges to the Government's programme for prison reform. Operationalization of the legal provision for sentence reduction, therefore, could help to improve discipline in the prisons and to reduce the number of escapes and attempts to escape.

53. The Special Representative welcomes the Ministry of Justice's recognition of the growing problem of excessive pre-trial detention. The law in force stipulates that the duration of pre-trial detention for adults must not exceed four months. This period may, however, be extended to six months if justified by requirements of the investigation. Prison records reveal that, in October 1999, a total of 58 detainees in the two prisons in Phnom Penh alone had been held for over six months. The continuing practice of such detention over a long period before an accused person is formally tried in court is a matter of serious concern.

54. The Special Representative is gravely concerned about reports of the executive authorities' continued lack of regard for the independence of the judiciary manifested in their interference in judicial matters, action which contravenes the fundamental principles of the Constitution of the Kingdom of Cambodia. Judges and prosecutors have repeatedly expressed concern over the tendency of provincial governors, military commanders and high-ranking Ministry of Justice officials to give them directions on the handling of individual court cases. The independence of the judiciary is further threatened by the limited police respect for court orders and their failure to carry out court judgements and orders.

55. On 3 December 1999 the Prime Minister issued an order instructing the military and the police to rearrest persons who earlier had been arrested for robbery, kidnapping or drug-trafficking, but had been released on bail, or because charges against them were dropped, or after trial prior to serving the complete sentence. The Prime Minister stated in the government order that the independence of the courts was respected but that the improper acts of bad people inside the court system could not be allowed. Although the Special Representative has repeatedly described these problems within the judiciary and called for action to address them,

he is concerned that the government order appears to ignore that, according to the Constitution, the Supreme Council of Magistracy is the body, which oversees the functioning of the judiciary - not the Government.

D. Protection against torture

56. It still happens that persons arrested by policemen or gendarmes are tortured to make "confessions", which often form the primary evidentiary basis for judicial prosecution. This problem has been analysed in detail in past reports by the Special Representative, who has regularly raised it with relevant security, administrative and judicial authorities at all levels since 1994. The problem has been acknowledged by the Ministry of Justice, which has actively encouraged prosecutors and judges to reject police evidence extracted under torture, to prosecute interrogators who have tortured detainees and to seek the cooperation of the National Police, the Royal Gendarmerie and the Ministry of the Interior to bring to justice those responsible for torture. These efforts have had limited effect because of the reluctance of the police and gendarmerie hierarchies to cooperate with the courts in cases involving subordinates responsible for torture.

57. In June 1997, the Special Representative presented to the Government a confidential report documenting 32 cases of torture of persons in police custody in Battambang. In a meeting with the Special Representative on 18 May 1999, the Director-General of the National Police reaffirmed his pledge to investigate the 32 cases and to issue strict instructions to prohibit the abuse of power by police interrogators and to take firm disciplinary measures against violators. At a further meeting, with staff of the Cambodia Office, on 25 May 1999, National Police representatives confirmed that the Director-General had sent instructions to the police throughout the country to cease any activity that might violate the law and the rights of citizens, that those police found violating would face sanctions, that there would be an investigation into the 32 cases of alleged torture in Battambang and that any police officer found responsible for torture in those cases would face sanctions.

58. On 28 September 1999, the Director-General of the National Police presented to the Cambodia Office the report of the National Police investigation into the 32 cases of alleged torture in Battambang. The report responds in detail to 31 of the cases. It stresses the need for improvements in technical areas and recommends that the police take responsibility for protecting detained persons from ill-treatment. In particular, the report recommends that training be provided to police officers in investigation, interrogation and evidence-gathering techniques, and invites technical and material assistance from national and international human rights organizations to improve professionalism in the police force. It also recommends that the Department of Criminal Police create a criminal procedure team, which would strengthen the investigation, management and documentation of criminal cases.

59. The Special Representative notes that the findings of the National Police investigation into the 31 cases of alleged torture differ in matters of fact from those described in the original report. The National Police investigation did not find evidence of torture having occurred in any one of the 31 cases investigated. The police report does state that "beatings and harsh words"

may have been used to extract confessions in a few cases, but does not consider that this substantiates allegations of torture. The report further recommends against any disciplinary or legal action being taken against police interrogators in Battambang.

60. The Special Representative discussed this police report with the Director-General of the National Police during his October visit to Cambodia. He pointed out that the Cambodia Office had received additional allegations of torture by law enforcement authorities in Battambang since August 1997. The Special Representative welcomes the renewed undertaking given by the Director-General of the National Police at that meeting to investigate and bring to justice police interrogators found responsible for abuses. At that meeting the Director-General of the National Police also stated his readiness to continue to act on reports of torture provided to him by the Special Representative. In December 1999 the Special Representative will forward to the Director-General of the National Police a report containing details of 20 further cases of alleged torture in Battambang province which have been investigated so far by the Cambodia Office.

61. The Special Representative is concerned that, subsequent to the issuing of the instruction by the Director-General of the National Police in May 1999, the Cambodia Office has continued to receive reports of torture and ill-treatment of persons arrested and detained for suspected criminal activities, including the case of Chea Bunthorn, a suspected thief arrested and detained without warrant on 24 September 1999 by Kien Svay District Police in Kandal province, who allegedly died as the result of torture.

E. Prison conditions

62. The Special Representative recognizes that some improvements have been made in the prison system, mainly in the form of construction and renovation of some prison buildings, with assistance provided by the Government of Australia through the Cambodian Criminal Justice Assistance Project, and by the International Committee of the Red Cross. The Ministry of the Interior has also been making timely disbursements of monthly allocations for food and other operating costs, and has recently been distributing essential materials to the prisons. Another positive development has been the adoption of new prison procedures containing important safeguards and promoting the application of international standards. However, implementation of the procedures must still be improved. Finally, budget allocations for prisons must be increased.

63. Between August 1988 and October 1999, staff of the Cambodia Office made visits to all 24 prisons in Cambodia, and they continue to monitor most of these prisons regularly. According to the Office records and statistics collected by a leading local NGO, the number of prisoners has increased by 29 per cent in the past two years. There are approximately 3,870 prison inmates in Cambodia - 2,584 convicted prisoners and 1,286 pre-trial detainees. Thus, overcrowding in the prisons continues to be a serious problem, as are the health and nutrition of these prisoners and the failure to address the special problems of women and minors in detention. More serious problems include the ill-treatment, and in some cases extra-judicial execution, of inmates who have been recaptured after escaping from prison.

64. In October 1999, a meeting was held between the Special Representative and officials from various Ministries, representatives of donor agencies and local and international NGOs,

all of whom work on prison issues. At the meeting, long-standing problems in the prison system were discussed, and recommendations put forward for resolving these problems. Among the recommendations made were the following:

> The Ministries of Health and the Interior must clarify and clearly define their roles with regard to the provision of health care to prisoners. Special consideration should be given to ensuring prisoners' access to the public health-care system, particularly in rural areas.
>
> Vocational training must be given to prisoners, particularly minors, in order to reduce recidivism and to provide better opportunities for prisoners upon their release.
>
> Women prisoners should be protected from abuse, particularly sexual abuse. Female officers (whose numbers should be increased) should be responsible for investigating allegations of abuse.
>
> Further safeguards against torture and ill-treatment in prisons (while not as common as in other places of detention) should be created. Investigations should be conducted into these allegations and disciplinary action taken when the allegations are found to be valid.
>
> The issue of excessive pre-trial detention, particularly in the case of minors, should be addressed.
>
> A system for the transfer of prisoners to the appeals courts for their hearings should be created.

65. Access to prisons by NGOs and international organizations is essential for the monitoring of prison conditions. A system to guarantee such access that involves minimum bureaucracy and at the same time minimum disturbance of the daily prison routine should be worked out. The Special Representative is disturbed by a letter issued by the Minister of Justice on 7 October 1999, copied to prosecutors and presidents of the courts, which prohibits confidential interviews with persons in pre-trial detention by NGOs or international agencies working in the prisons. Therefore, visits from associations cannot be conducted without prison staff or the Public Prosecutor being present. The Special Representative believes that prisoners may feel constrained by the presence of prison staff or the Public Prosecutor, and may not feel they can express their opinions regarding the conditions in the prison or the details of their arrest and treatment. While prison security mandates that prison staff be near the area, they should not be in a position to overhear conversations between the prisoner and the visitor. In addition, confidential interviews of pre-trial detainees are useful in monitoring, and therefore preventing, torture and would serve to identify where such torture or ill-treatment occurs.

F. Labour rights

66. The Special Representative remains concerned at continuing violations of labour rights in Cambodia. The more commonly reported violations include arbitrary dismissals or suspensions of trade union members; efforts by management to influence the actions or decisions of trade unions or workers' representatives; unsafe and unhealthy working conditions; child labour; loss of pay or job for refusing to work overtime; no rest days and being required to work on national

holidays; fines for taking rest days; dismissal without cause or compensation; and underpayment of the legally stipulated minimum monthly wage of US$ 40 to garment workers. The Special Representative hopes that the existing laws regulating labour will be fully and effectively enforced to address these violations.

67. The Special Representative welcomes some recent positive developments in efforts to improve the promotion and protection of labour rights in Cambodia. One of them is the decision by the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation to establish the Labour Advisory Committee required under the Labour Code.

68. During a November 1999 workshop in Phnom Penh on International Labour Organization conventions, the serious problem of Cambodian children under 15 years of age being exploited and forced to work, and to work in hazardous conditions, was again raised. According to the latest International Labour Organization survey, conducted in 1996, 10 per cent of Cambodian children between the ages of 5 to 14 were working, three quarters of whom did not attend school. Currently, the Government of Cambodia is considering ratifying International Labour Organization Convention No. 182, which calls for the elimination of child labour that can harm children's health, safety and morals. The Special Representative expresses his strong support for the ratification of Convention No. 182.

G. Rights of the child

69. The Special Representative expresses his deep concern over the failure of one of the prosecutors of the Phnom Penh Municipal Court to order the arrest of the owners of the Singapore II Hotel in Phnom Penh on 29 October 1999. The prosecutor had received a complaint written by a 15-year-old girl alleging that the hotel owners had purchased, confined and physically abused her, and had forced her to provide sexual services to hotel guests. During the execution of a search warrant at the hotel, the prosecutor found evidence of illegal contracts relating to the sale of other young girls signed by the hotel owners, and also discovered two more minors at the Singapore II Hotel, who made allegations identical to those of the original complainant.

70. The Special Representative understands that, despite very substantial evidence of a crime in progress, the prosecutor refused to order the arrest of the hotel owners. The Cambodia Office wrote to the Minister of Justice on 12 November requesting, as a matter of urgency, that an impartial and competent alternative prosecutor be assigned to the case to investigate fully and bring to justice those responsible for the sexual exploitation of the minors. The Office requested that the original prosecutor in the case be appropriately sanctioned for his failure to perform his duty. The Special Representative welcomes the special interest expressed by the Minister of Women's and Veterans' Affairs in this and other cases relating to the sexual exploitation of women and girls.

71. The problem of the detention and imprisonment of children aged between 13 and 18 years continues. Reports have been received of the torture and beating of children during arrest and while in police custody. During his October mission to Cambodia, the Special Representative spoke to four 14-year-old boys, three of whom were serving sentences and one who was in pre-trial detention, mixed in among the adult population in the Kompong Thom

provincial prison. The Special Representative raised the issue of minors in prison with the Prime Minister and the Deputy Prime Minister and Co-Minister of the Interior during his October visit. The Special Representative expressed his concerns over the grave situation in Cambodia's prisons generally, and the particularly severe hardships faced by minors incarcerated in such conditions. The Special Representative further noted that minors in prisons were deprived of their right to education and that one well-known consequence of mixing minors with adults in the prison system was the maturing and reinforcing of criminality among those minors, severely undermining their chances of rehabilitation and social reintegration. The Special Representative welcomes the concerns expressed by the Prime Minister and the Deputy Prime Minister and Co-Minister of the Interior about the plight of minors detained among adult prisoners, and their commitment to search for alternative solutions.

H. Rights of ethnic minorities

72. In October 1999, the municipal authorities of Phnom Penh decided to move approximately 700 ethnic Vietnamese families living on floating houses on the Bassac river in Phnom Penh and to relocate them to Prek Pra commune, Kandal province. Some official comments referred to these families as illegal immigrants, but the authorities did not check the families' identification documents before removing them. Although many of the affected families possess the legal documents to be recognized either as Khmer citizens or as legal immigrants, many had their documents confiscated by authorities around the time of their removal. As of December 1999, the documents have not been returned.

73. To declare a specific group of people as illegal immigrants without a fair process to determine their legal status in the country is discriminatory and violates Cambodian law and international human rights standards. Also, those who are declared illegal have certain human rights which should be respected.

74. During the removal, people's lives were put at risk when they fell into the river and their property was in some cases lost. When the ethnic Vietnamese families began to arrive at the place where they were to be relocated, local people and the local authorities attempted to prevent them from staying by assaulting several people and cutting the mooring ropes of the floating houses. Over a hundred families who were not able to pay money to stay in Prek Pra or other nearby communes continued down river to Prek Chrey Thom commune at the Cambodian and Vietnamese border. They were reportedly prevented from either returning upriver or crossing the border.

75. The Special Representative urges the Government to take steps to prevent any such evictions in the future and to ensure that the confiscated documents are restored to their owners without delay. The Special Representative is also concerned about the plan to give substantial monetary rewards to anyone who can single out illegal immigrants, a policy which may lead to further racial discrimination. The legal status of immigrants should only be established by government officials with the authority to enforce the immigration law. The Special Representative welcomes the creation of the Committee for Monitoring the Implementation of the Immigration Law, which brings together human rights, legal aid and other community advocacy groups.

76. During the last few months of 1999, the Phnom Penh municipal government and police apprehended and detained over 600 Chinese nationals, most of whom had been brought from China through Viet Nam and then confined in houses in Phnom Penh on the pretext that visas would be obtained for them to travel onwards from Cambodia to third countries, including the United States and Australia. Since most did not possess the proper papers to be in Cambodia, they were considered to be illegal immigrants. After they had been detained for a number of weeks by the authorities while awaiting the court appearance required under Cambodia's immigration law, the court hearing was cancelled and most were flown back to China. Although no arrests have been made in respect of the illegal entry of these Chinese nationals into Cambodia, several senior government officials have publicly stated that they suspect that high-ranking government officials have been involved. The Special Representative recommends that the Government of Cambodia discuss with the Governments of the countries from which such illegal immigrants originate and of the countries through which they transit, ways in which such abuses of the law can be prevented. Appropriate measures are needed in order both to uphold the rule of law and to prevent the violation of the rights of those individuals who become involved in such illegal operations.

III. IMPLEMENTATION OF RECOMMENDATIONS

77. The Special Representative has in the present and in previous reports given attention to the deep problems within the justice system. There are gaps in the legal framework. The absence of, for instance, a code of criminal procedure is a serious drawback. New generations of lawyers have graduated, but the overall educational level among judges and prosecutors is still low. The Supreme Council of Magistracy, which was set up to oversee the judicial system, including bearing responsibility for appointments and disciplinary action, has only now begun to meet. There is confusion about which cases should be brought to the military court and which to a civilian court; in September 1999 two political activists were wrongfully put in military jail and remained there in mid-December.

78. There are serious resource problems. Crucial law texts and case references are not always available in the courts themselves. Facilities for investigations are limited, including forensic equipment and means of transport to crime sites. This has contributed to the problem of excessive pre-trial detention; people arrested are kept in prison awaiting trial longer than the maximum six months allowed by the law. The salaries of court staff continue to be low, which in turn encourages bribery.

79. These issues have contributed to a deep crisis in people's trust in the justice system. The decision of the Government to introduce judicial reform is therefore especially important. The Ministry of Justice has made progress in drafting a code of criminal procedure, a statute on magistrates and a statute on court clerks, all of which are essential for the proper functioning of the judiciary. The drafting process appears to have gone well so far and it is planned to submit some of the draft laws to the National Assembly shortly. Japan, France and Canada, among other countries, have provided constructive assistance in this process.

80. Another positive step has been the recent amendment by the National Assembly of article 51 of the 1994 Law on Civil Servants. This article had previously been mentioned in

resolutions of the General Assembly and the Commission on Human Rights as it required courts to seek ministerial permission before arrest and prosecution in individual cases. There has been some discussion about the new formulation of article 51, but government representatives have assured the Special Representative that the change means that the formula whereby that permission had to be requested is withdrawn and that the courts and the police will be informed accordingly.

81. Legal reforms alone, however, will not guarantee the independence of the judiciary. Further measures are needed to protect the courts against undue pressure or obstruction from other State institutions or influential individuals.

82. During his last mission, the Special Representative again raised specific instances of military refusal to cooperate with the courts in order to clarify cases of the killing of civilians. The Prime Minister told him that he would act on those cases and instruct the military hierarchy to obey court orders.

83. The Special Representative pointed out another major problem: that professional standards in the courts are low and that there is corruption in the system. A mixture of incompetence and greed has contributed to making the court system ineffective, further increasing the widespread sense in Cambodia that people with money or high-level connections can escape justice even for the worst of crimes. This, in turn, may have encouraged people to take the law into their own hands. The number of reported mob lynchings of suspects immediately after capture has recently increased considerably.

84. In December 1999, the Prime Minister instructed the Ministries of the Interior, Defence and Justice, as well as the military and the police, to rearrest all suspects in cases of robbery, kidnapping and drug-trafficking against whom charges had been dropped or who had been released from prison before the end of their sentences. Though forceful action was indeed required, the Special Representative regretted that it was taken in disregard of the Supreme Council of Magistracy, the constitutional body established precisely to oversee the functioning of the court system. Reforms should be introduced in a manner which enhances, rather than undermines, the independence of the judiciary.

85. Political support is needed to strengthen and enhance the competence and independence of the judicial system. Further and serious efforts are required to investigate and bring to justice those responsible for the serious acts of politically-related violence committed in recent years. It is disheartening that no one has been arrested and sentenced for the hand-grenade attack outside the National Assembly on 30 March 1997, which killed at least 16 demonstrators and injured more than 100, or for the murder of Secretary of State Ho Sok in July the same year, in spite of the pledges made that serious investigations would be undertaken.

86. Some cases of killings which were brought to the Government's attention by the Special Representative in memoranda in August 1997 and May 1998 have been investigated during 1999. He has been informed about investigations in nine such cases, which have led to the trial and imprisonment of three culprits. The remaining cases should now be pursued with vigour.

87. Many Cambodians have told the Special Representative how important it is that those responsible for the most serious crimes during the Khmer Rouge period are indeed brought to trial. In the assessment of the Special Representative, there is a widespread hope in Cambodia that the ongoing contacts between the Government and the United Nations will lead to such a trial in Cambodia, with strong international participation and with guarantees for international standards of justice, fairness and due process of law. Such a trial would be important for the memory of those killed and for their relatives, and would also serve as an essential message to future generations.

88. The Special Representative has visited a number of prisons in Cambodia. The conditions in several of them are very bad, with huge problems relating to food, health care and other requirements, and with buildings which make it difficult to prevent escapes. The Deputy Prime Minister and Co-Minister of the Interior has informed the Special Representative about the Ministry's intention to review every prison in the country. The Government of Australia has given essential assistance to prison reform in Cambodia. These efforts need follow-up.

89. Improvements have been made in the area of the right to health. The infant mortality rate has gone down considerably, but is still as high as almost 90 per one thousand live births. About half of all children are reported to be malnourished and there is widespread stunting and wasting. The maternal mortality rate is high and each year 2,000 women die as a result of complications of pregnancy and childbirth. There is high prevalence of HIV/AIDS and the epidemic is spreading rapidly, with consequences which will become more serious within a short time. The Special Representative has, however, been impressed by the energetic plans of the Ministry of Health to tackle public health issues in the country.

90. More than one fifth of children aged between 6 and 11 do not attend school. Drop-out and repetition rates are high. Children with disabilities face particular risks of exclusion from the school system. In the remote provinces, the enrolment rate is less than 50 per cent. The whole education system suffers from being under-resourced and the present trend towards privatization may further disadvantage poor children. The Special Representative recommends strongly further international cooperation to support educational reform in Cambodia. Again, the Ministry of Education has important plans for reform and revitalization of the system.

91. Minorities are also a human rights concern in Cambodia. The Special Representative visited villages of the highland peoples in Ratanakiri in January 1999 and learnt about their problems and attempts to resolve them. One major problem for them relates to land use and entitlement, which makes the outcome of the discussion of the new draft land law of special significance.

92. On other minority issues, the Special Representative has pleaded for clarification of the status of people of Vietnamese origin who have lived for a long period in Cambodia, and in many cases were in fact born in the country. He has regretted outbursts of xenophobic, anti-Vietnamese agitation and has congratulated politicians who have taken a principled position against such behaviour. The recent relocations by force of people of Vietnamese origin living in Phnom Penh violated their human rights.

IV. CONCLUDING REMARKS

93. The problems listed above should not be underestimated. Many of them are enormous and require both strong political commitment and considerable other resources. If the Cambodians invite the international community to cooperate in these efforts, the Special Representative suggests that the United Nations system, as well as other organizations and individual Governments, should respond in a spirit of solidarity. It is a positive sign that the Cambodia Office of the United Nations High Commissioner for Human Rights will continue its programmes for at least another two years, with the agreement of both the United Nations and the Government. This is a responsibility which should be exercised by the High Commissioner and her representatives with competence, commitment and respect for the Cambodian people.

94. As this is the last report of the Special Representative, he would like to thank all his Cambodian and international colleagues for their contributions to this important team work. Special thanks go to Rosemary McCreery, who directed the High Commissioner's Office in Cambodia during a large part of the period of his mandate, to Christophe Peschoux and to Jay Jordens who were his special assistants at the Cambodia Office and to Hannah Wu who assisted him in the Office of the High Commissioner for Human Rights in Geneva. He is also indebted to Francesc Vendrell and Jonathan Prentice who secured continuing support from the United Nations Secretariat in New York.